

00-026

**TAXATION: MISCELLANEOUS TAXES.**

**Limited authorization to use taxes to pay personnel costs associated with operating E-911 system does not extend to contract costs for emergency medical services. Sussex County may not use taxes imposed on telephone service consumers for establishment and maintenance of E-911 system to pay volunteer rescue squad to contract with independent contractor for provision of emergency medical services.**

Mr. Henry A. Thompson Sr.  
County Attorney for Sussex County

September 26, 2000

You ask whether Sussex County may pay a monthly sum to a volunteer rescue squad to contract with an independent contractor to provide emergency medical services for an area of the county, Monday through Friday, from 6:00 a.m. to 6:00 p.m., with the contract sum paid from taxes imposed pursuant to § 58.1-3813.1 of the *Code of Virginia*.<sup>1</sup> You conclude that the county may not do so under the law.<sup>2</sup>

You relate that the county board of supervisors seeks to pay a monthly sum to a volunteer rescue squad that provides emergency medical services to the county. The volunteer rescue squad proposes to use the money to contract with an independent contractor to provide emergency medical services for an area of the county between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday. The board seeks to pay the contract sum from the monies in the county budget derived from taxes imposed pursuant to § 58.1-3813.1.

Section 58.1-3813.1(B) authorizes a locality to impose a special tax on telephone service consumers for the purpose of establishing and maintaining an E-911 system. Section 58.1-3813.1(F) provides that, in establishing the system, the jurisdiction shall use the taxes imposed under § 58.1-3813.1

solely to pay for reasonable, direct recurring and nonrecurring capital costs, and operating expenses incurred by a public safety answering point in designing, upgrading, leasing, purchasing, programming, installing, testing, administering, delivering, or maintaining all necessary data, hardware and software required to receive and process emergency telephone calls through an E-911 system[.]

A recent opinion of the Attorney General concludes that the General Assembly intended only a limited authorization for payment of personnel costs associated with operating an E-911 system.<sup>3</sup> A 1990 opinion considers whether § 58.1-3813(D) authorizes as a recurring expense the recovery of personnel costs necessary to operate an E-911 system.<sup>4</sup> When the 1990 opinion was rendered, § 58.1-3813(D) provided for a tax in an amount "necessary to offset recurring maintenance costs only" after recovery of the initial costs of implementing the system.<sup>5</sup> The 1990 opinion distinguishes between recurring maintenance costs and recurring operational costs and concludes that, while the cost of personnel

hired to repair and service the E-911 equipment constitutes a recurring maintenance cost contemplated within the language of the statute, no language indicates a legislative intent to authorize use of the tax to pay the personnel costs associated with operating an E-911 system.<sup>6</sup>

Section 58.1-3813.1(F), the comparable statute to repealed § 58.1-3813(D), states that the "[a]mounts collected from the tax shall be used solely to pay" for certain personnel costs, including

salaries and fringe benefits of dispatchers and direct call-takers of an E-911 system and costs incurred in training dispatchers and direct call-takers in receiving and dispatching emergency telephone calls, and the salary and fringe benefits of the public safety answering point director or coordinator so long as such person has no other duties other than the responsibility for the public safety answering point.

This language, in addition to the general principle that statutes authorizing a tax are to be narrowly construed against the government,<sup>7</sup> directs me to conclude that you are correct that the taxes imposed pursuant to § 58.1-3813.1 may not be used to contract with an independent contractor to provide emergency medical services. It is my opinion, therefore, that you are correct that Sussex County has no authority to use the taxes collected pursuant to § 58.1-3813.1 to pay a volunteer rescue squad to contract with an independent contractor for the provision of emergency medical services.

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<sup>1</sup>The 2000 Session of the General Assembly repealed § 58.1-3813, the statute to which you refer, and added § 58.1-3813.1. 2000 Va. Acts ch. 1064, at 2585, 2604-05. This opinion, therefore, references § 58.1-3813.1.

<sup>2</sup>Section 2.1-118 requires that any request from a county attorney for an official opinion from the Attorney General "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions."

<sup>3</sup>See 1996 Op. Va. Att'y Gen. 202, 203.

<sup>4</sup>1990 Op. Va. Att'y Gen. 228.

<sup>5</sup>*Id.* at 229 (quoting § 58.1-3813(D)).

<sup>6</sup>See *id.*

<sup>7</sup>See 1993 Op. Va. Att'y Gen. 237, 239, and cases cited therein.